



MINUTES

**Committee on Development and Planning
Thursday, August 11, 2016 @ 10:00 a.m.
10th Floor Conference Room, City Hall**

CALL TO ORDER

The meeting was called to order at 10:00 a.m.

ROLL CALL

Council Member Jody Washington, Chair
Council Member Jessica Yorko, Vice Chair-excused
Councilmember Judi Brown Clarke, Member

OTHERS PRESENT

Sherrie Boak, Council Staff
Jim Smiertka, City Attorney
Mark Dotson, Deputy City Attorney
Brett Kaschinske
Mark Mello
Price Dobernack
Steve Japinga, Lansing Regional Chamber of Commerce
Council Member Wood

PUBLIC COMMENT

Council Member Washington stated all comments will be taken at the agenda item.

MINUTES

MOTION BY COUNCIL MEMBER BROWN CLARKE TO APPROVE THE MINUTES FROM JULY 14, 2016 AS PRESENTED. MOTION CARRIED 2-0.

MOTION BY COUNCIL MEMBER BROWN CLARKE TO APPROVE THE MINUTES FROM JULY 28, 2016 AS PRESENTED. MOTION CARRIED 2-0.

DISCUSSION/ACTION:

RESOLUTION – License Agreement for Zip line at Riverfront Park; Zip the Grand Inc.

Mr. Dotson distributed a copy of the lease, an aerial photo and the release of liability form. Council Member Washington began by asking Mr. Kaschinske why the applicant was not able to secure a site in Grand Rapids. Mr. Kaschinske stated that the applicant has stated that Grand Rapids wanted an exchange of land, they want Zip the Grand to buy land along the Grand River and make it park land. Council Member Wood stated she heard the applicant was not able to

secure enough resources. Mr. Kaschinske did acknowledge that the City of Grand Rapids stated the applicant did have financial issues, therefore the Lansing lease has added items. One item added is a restoration condition if the business fails. The applicant cannot secure financing until they get approval from the City. Council Member Brown Clarke pointed out that if this in the business they are in, they should be able to show a level of financial capacity. Mr. Kaschinske acknowledged they have received a business plan with a funding model.

Council Member Wood voiced her concerns with the license agreement, the annual fee costs in comparison to the current draft Medical Marihuana Ordinance the Committee on Public Safety is reviewing. She encouraged similar costs of \$10,000 annual fees and \$5,000 application fees. Council Member Washington was not opposed to the proposed \$6,000 up front fee, and did not agree to compare zip lines with medical marihuana standards and requirements or licensing. Council Member Wood clarified she was encouraging that there be a model for licensing with certain requirements for all licenses. Council Member Washington again agreed on licensing, however did not agree to compare this application with medical marihuana. Mr. Dotson explained that the licensing fees in this lease are representative of the fair market value of the land as it is being used. The costs that were just compared are different and not parallel in anyway. Council Member Brown Clarke asked if the long 10 year lease is standard or was it agreed upon already. Mr. Smiertka pointed out that this is park land, and the use is consistent with parks and recreation. This structure is not something that gets picked up at the end of summer, so this allows the person viability to operate in the long term. The needs match up with the investment. Mr. Kaschinske added that the 10 years lease was negotiated along with the size and scope of the structure. He added that the applicant is also looking to at an area at Center Street to purchase for their restrooms, parking, operations, and sales. Mr. Dotson did point out to the Committee that there is a clause for the council to get out of the lease, Section 3.2.

Council Member Washington asked what the 2.5% gross gate admissions will be used for by the Parks and Recreation Department. Mr. Kaschinske confirmed it will be considered revenue like all other general fund. Council Member Wood asked Mr. Kaschinske for the business plan from the applicant that reflects this, which Mr. Kaschinske state he could forward from their original submission.

Council Member Washington asked if the lease can be changed to request the \$6,000 up front not a monthly payment to equal \$6,000. Mr. Smiertka stated he could change the lease to ask that, however it was already negotiated. Mr. Kaschinske pointed out to the Committee that there is a \$20,000 security deposit in the first year; they then will pay for the survey which is about \$5,000. They will be billed monthly by the City for the \$6,000 annual fee. He acknowledged he could approach the applicant about the \$6,000 up front instead of a monthly fee.

The Committee discussed the liability of the structure, the liability once the users finish the ride, or choose not to return to the starting tower. Mr. Dotson noted that once a user is physically on their property their liability insurance covers. Council Member Brown Clarke asked about if a user were to fall on City property or the water, if it would be City liability. Mr. Dotson stated if an injury results from the event it is their liability, noting that the sidewalk is City property and did not want to comment further. Mr. Smiertka continued the explanation stating that the City has government immunity. It does not apply if they are engaged in a property function, events. Now there is a potential someone will sue and try to get at the City, and try to claim that because of license and lease the City has engaged in is a partnership. That is what Law is looking at not to happen. The agreement has an assumption of risk form and a waiver. Council Member Brown

Clarke asked what the “users” are when they sign, and is that embedded in that language. Mr. Smiertka that interpretation if a case is filed will be up to the judge. Mr. Kaschinske informed the Committee that the language in the lease was provided by the applicant and covers the things the City wanted covered. Mr. Dotson stated the liability concerns can be address in the release form in case the user does not want to take the zip line back across the river and chooses to come down walk back. Council Member Brown Clarke also asked that the documents address the operator on the second tower have the ability and experience to end the ride if the user is not compiling with the rules or is in unable to return to the start tower.

Council Member Wood asked for details to be added that address repair, maintenance and annual inspections. The document should also include the legal age of the operator. Mr. Kaschinske referenced 9.4 in the lease which states they must follow all local, State and Federal regulations. Council Member Wood requested specific language, so Council Member Washington asked law to spell out that the annual inspection is required and cite the Michigan law.

Mr. Kaschinske reiterated everything the Committee was looking for, which includes the business plan, the \$6,000 yearly fee be paid up front not over a monthly billing, the waiver and release include language on removal from the ride if not following directions, include a legal age of operations, and add the inspection process.

Council Member Washington reminded the group that they could have all the safety measures in place, and it could still not be enough. If the group continues to consider everything that could go wrong, nothing will happen with the site and business at all.

Council Member Wood asked for security cameras on the site, with consideration of a feed to allow the Police to review. Mr. Kaschinske stated they would have security on site, not the City.

DISCUSSION – Responsible Bidding Ordinance

Mr. Japinga acknowledged the Committee on their work and the invitation to participate in the discussion. He confirmed the understanding that the Chamber is strong supporters of buy local and local workers.

Mr. Smiertka began by stating he did not have an issue with the original regulatory concept; however his proposed draft from August 10, 2016 is similar to incentive agreements developers are familiar with. The regulatory ordinance has concerns such as sunset provisions, and could affect relationships and open up third parties to sue, and use a cause of action, claiming there is an ordinance or local law. He noted that the word “reasonable” in the original is an open word and the plaintiff will claim injunction and create work delays. Developers that do incentives are used to an agreement where they promise things or lose the tax incentive. So Mr. Smiertka then rather than propose a regulatory ordinance as was first proposed, he chose to draft another ordinance with similar to the incentives with features from the original. Listed on page 2 and 3 , (9) Transparent and Fair Bidding Process outlined openness, public advertisements, solicitation for bids, public disclosure, sufficient time to respond, and notification to bidders who did not win the bid. Summarized this means when this agreed upon before a signed agreement, if they violate Council can revoke the incentive. The project labor agreement proposed in the original ordinance is still in the law draft. Mr. Smiertka did remind the Committee that if the City of Lansing has a regulatory ordinance that developers are not used to, they could consider developing in an adjoining community that does not have, which could put Lansing at a disadvantage.

Council Member Wood asked Law to if they will define what "local labor" is in the agreement, and who will provide enforcement if there is a complaint. Mr. Smiertka noted the ordinance is broad that does require the developer to put the plan in front of Council, so Council can ask for specifics and it allows Council flexibility. Enforcement can be done by anyone, but can put in the City Attorney office. Council Member Brown Clarke asked for it to be in the structure of the language, because it becomes too flexible on who is in leadership. With Law and Council reviewing, there will be checks and balances.

Mr. Dobernack informed the Committee he has already routed the draft ordinance to some surrounding communities and they are in favor of the same process.

Council Member Brown Clarke asked for clarification on a condition she saw in an earlier version that stated there was a sliding scale based on the size of the project, and if it is over a certain threshold there was a local labor exception. Council Member Wood stated it was in the original ordinance, but Mr. Smiertka stated he was not comfortable with the scale of \$10,000 so took it out of his version. Mr. Dobernack then asked where the condition was that if there were violations, the developers would not get future incentives and projects. Mr. Smiertka state due was not in favor of a barred bidders list because they would not have done anything criminal. Council Member Wood asked it be disclosed on the application. Council Member Washington suggested considering an option to disclose it but not a mandate, and not ban for years, but put in as an option. She then noted she did not support putting in something that would put Lansing at a disadvantage to other areas. In regards to the earlier discussion on "local labor" she need note her understanding would be the tri-county area, and someone else may mean specifically the City of Lansing.

Law was asked to provide at the next meeting a template or sample of the standard agreement they are speaking about. Mr. Japinga asked the Committee to invite and encourage LEAP to attend the next meeting. Council Member Washington stated LEAP will be formally invited.

The Committee consensus was to proceed with the draft ordinance by the City Attorney office from August 10, 2016.

Council Member Washington asked Mr. Mello to return to a future meeting in September where she has invited Mr. Schrader to help the Committee understanding the environmental expectations and environmental clean-up, because of his past environmental experience.

Adjourn at 11:12 a.m.

Submitted by,

Sherrie Boak, Recording Secretary,

Lansing City Council

Approved by the Committee on August 25, 2016